

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CRIMINAL CASE NO. 3:08cr192

UNITED STATES OF AMERICA,

vs.

GRADY LEE RUSHING.

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ORDER

THIS MATTER is before the Court on the Defendant's Motion for Reconsideration of Order [Doc. 13].

On August 28, 2008, the Defendant was charged in a two-count Indictment with possession with intent to distribute crack cocaine, in violation of 21 U.S.C. §§841(a)(1) and 841(b)(1)(B) and in violation of 21 U.S.C. §§841(a)(1) and 841(b)(1)(C). At the Defendant's initial appearance on September 12, 2008, the Court approved the appointment of counsel. The Defendant's arraignment was on September 17, 2008, at which time he first appeared through appointed counsel. At the arraignment, the Defendant's case was placed on the October 14, 2008 calendar for trial. The Defendant moved to continue the trial date pursuant to 18 U.S.C. §3161(c)(2). [Doc. 8].

The Court granted the Defendant's request, and the case was continued to the December 2, 2008 trial term. [Doc. 9].

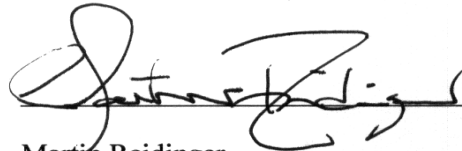
The Defendant moved for a second continuance on November 14, 2008, stating that his counsel was moving to withdraw from the case. [Doc. 11]. The Court denied the motion for continuance as premature, as counsel had not yet been permitted to withdraw. [Doc. 12]. On November 24, 2008, Magistrate Judge Horn conducted a status of counsel hearing and granted counsel's motion to withdraw. Before withdrawing, Defendant's counsel filed the present motion [Doc. 13], seeking reconsideration of the Court's prior Order denying the motion for continuance.

The Court finds that this case should be continued. If the requested continuance were not granted, Defendant's new counsel would not have an adequate opportunity to prepare for trial, taking into account the exercise of due diligence. The Court therefore finds that a failure to grant the continuance "would unreasonably deny the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. §3161(h)(8)(B)(iv).

For the reasons stated herein, the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. §3161(h)(8)(A).

IT IS, THEREFORE, ORDERED that the Defendant's Motion for Reconsideration of Order [Doc. 13] is **GRANTED**, and the above-captioned case is **CONTINUED** from the December 2, 2008 term in the Charlotte Division.

Signed: November 24, 2008


Martin Reidinger
United States District Judge

